

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION**

GEORGE FRANCO,

Plaintiff,

v.

BANK OF AMERICA,

Defendant.

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CIVIL ACTION NO.

SA-08-CV-0475 FB (NN)

ORDER EXTENDING TIME TO SERVE DEFENDANT

The purpose of this order is to extend the time for serving the defendant, Bank of America. Previously, I issued a show cause order and directed plaintiff George Franco to explain why this case should not be dismissed for failing to serve the defendant within the time required by the Federal Rules of Civil Procedure.¹ Franco responded and stated that he understood that paying the filing fee included serving the defendant. Franco explained that he sent a summons to Bank of America and attached a copy a summons and a mail receipt addressed to Bank of America. Because the receipt does not indicate whether the summons and complaint were received by someone authorized to accept service of process, Franco has not shown that Bank of America has been served. In the interest of justice, the court will interpret Franco's response as a request for additional time to effect service.

"The plaintiff is responsible for having the summons and complaint served within the time allowed by Rule 4(m) [of the Federal Rules of Civil Procedure]"² The plaintiff may effect service by "delivering a copy of each to an agent authorized by appointment or by law to

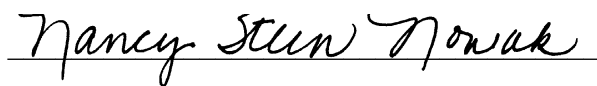
¹Docket entry # 10.

²Fed. R. Civ. Proc. 4(c)(1) (emphasis added).

receive service of process.”³ Payment of a filing fee has no bearing on serving the summons and complaint.⁴ The summons attached to Franco’s response is addressed to Bank of America, 14003 NE Woodinville Duvall Road, Woodinville, Washington. Franco’s complaint states that he was formerly employed by Bank of America, 3700 S. New Braunfels Avenue, San Antonio, Texas. The difference in addresses indicates that Franco may not have attempted to serve an authorized agent for Bank of America.

Out of state financial institutions transacting business in Texas, like banks, are required to file an application for registration with the Office of the Texas Secretary of State.⁵ Registration includes designating a registered agent. To determine whether the registered agent information for a particular bank is on file with the Secretary of State, a plaintiff may contact the Secretary’s Public Information and Response Team by phone at (512) 463-5555 or e-mail at Corpinfo@sos.state.tx.us. To avoid dismissal of this case for failing to serve Bank of America, Franco should determine the registered agent for service of process for Bank of America and provide proof of service on Bank of America by December 30, 2008. If Franco fails to provide proof of service by that date, I will recommend to the district judge that this case be dismissed under Rule 4(m).

SIGNED on December 2, 2008.

A handwritten signature in black ink, reading "Nancy Stein Nowak", written over a horizontal line.

NANCY STEIN NOWAK
UNITED STATES MAGISTRATE JUDGE

³Fed. R. Civ. Proc. 4(e)(2)(C).

⁴See 28 U.S.C. § 1914.

⁵See Tex. Fin. Code Ann. § 201.102.